IN THE HIGH COURT OF BOMBAY AT GOA

Appeal from Order No.42 of 2000 with Civil Application No.149 of 2000; Appeal from Order No.48 of 2000 with Civil Application No.162 of 2000; Appeal from Order No.50 of 2000 with Civil Application No.174 of 2000 and Appeal from Order No.58 of 2000 with Civil Application No.246 of 2000.

APPEAL FROM ORDER NO.42 OF 2000 WITH CIVIL APPLICATION NO.149 OF 2000

Salgaonkar Mining Industries Ltd.,
a company incorporated under the
Companies Act, 1956, and having
its registered office at Pelagia
Building, Vasco-da-Gama,Goa ...APPELLANTS.

VERSUS

1. Shri Raghuvir Rajaram
Paigankar, son of Shri
Rajaram Rangaji Paigankar,
mine owner,since deceased,
represented by legal heirs:

1a) Shri Rohit Roghuvir Paigankar,
major; and his wife,

1b) Smt. Nutan Rohit Paigankar,
major;

1c) Shri Rajendra alias Rajesh
Raghuvir Paigankar,major;
and his wife,

1d) Smt. Pratibha Rajendra
Paigankar, major,

All residing at No.442,
Opposite Peerless Office, Cine
Vishant Road, Aquem Alto,
Margao,Goa;

1e) Smt. Radha Nandalal Kairo,
major; and her husband

1f) Shri Nandalal Kairo,
major,

Both residing at 3rd floor,
Govardhan Apartments,

Aquem Alto,Margao-Goa;

1g) Smt. Sujata Sharad Korgaonkar, major, and her husband

1h) Shri Sharad T. Korgaonkar, major;

Both residing at Damodar Bhawan, Cittaranjan Road, Vile Parle (East);

1i) Smt. Savita B. Gianani, major and her husband,

1j) Shri Bhisham B. Gianani, major,

Both residing at A-3, Damodar Housing Society, Aquem Alto, Margao,Goa;

2. V.M. Salgaonkar & Brother Ltd. a Company incorporated under the Companies Act, 1956 and having its registered office at Salgaonkar Building, Vasco-da-Gama, Goa ... RESPONDENTS.

APPEAL FROM ORDER NO.48 OF 2000 WITH CIVIL APPLICATION NO.162 OF 2000

and

APPEAL FROM ORDER NO.50 OF 2000 WITH CIVIL APPLICATION NO.174 OF 2000

Messrs. Shantilal Khushaldas and Brothers Private Limited, a Private Limited Company, incorporated under the Companies Act, 1956 and having its Registered Office at Gosalia Building, Margao-Goa ... APPELLANTS

VERSUS

1. Raghuvir R. Paigankar alias Raguvir Rajaram Poinguinkar, major; and his wife (since deceased), by his heirs:-

(a) Shri Rohit Raghuvir Poinguinkar, major; and his wife;

(b) Smt. Nutan Rohit Paingankar;

(c) Shri Rajendra alias Rajesh Raghuvir Paingankar, major, and his wife;

(d) Smt. Pratibha Rajendra Paingankar, major,

All residing at House No.442, opposite Peerless Office, Line Vishant Road, Aquem Alto, Margao-Goa;

(e) Smt. Radha Mandalal Kairo, major, and her husband;

(f) Shri Nandalal Kairo, major,

Both residing at 3rd floor, Govardhan Apartment, Aquem Alto, Margao-Goa;

(g) Smt. Sujata Sharad Korgaonkar, major, and her husband;

(h) Shri Sharad T. Korgaonkar, major;

Both residing at Damodar Bhawan, Ch. Harajan Road, Ville-Parle (EAST).

(i) Smt. Savita B. Gianaui, major, residing at A-3, Damodar Housing Society, Aquem Alto, Margao-Goa;

2. Mrs. Shakuntala Raghuvir Paigankar, residing near Cine Vishant, Margao-Goa ...RESPONDENTS

APPEAL FROM ORDER NO.58 OF 2000 WITH CIVIL APPLICATION NO.246 OF 2000

Salgaocar Mining Industries Ltd., a Company incorporated under the Companies Act, 1956, and having

its registered office at
Salgaocar Chambers,
Margao-Goa ... APPELLANTS.

VERSUS

1. Roghuvir Rajaram Paingankar,
son of Rajaram Rangaji Paigankar,
mine owner (since deceased) through his
legal heirs:

1(a) Shri Rohit Roghuvir Paingankar,
major and his wife;

1(b) Smt. Nutan Rohit Paingankar,

1(c) Shri Rajendra alias Rajesh
Roghuvir Paingankar, major
and his wife,

1(d) Smt. Pratibha Rajendra Paigankar,
major,

All residing at House No.442,
Opposite Peerless Office,
Cine Vishant Road,
Aquem-Alto,
Margao, Goa;

1(e) Smt. Radha Nandalal Kairo,
major, and her husband,

1(f) Shri Nandalal Kairo, major,

Both residing at 3rd floor,
Govardhan Appartment,
Aquem-Alto, Margao,Goa;

1(g) Smt. Sujata Sharad Korgaonkar,
major, and her husband,

1(h) Shri Sharad T. Korgaonkar,
major,

Both residing at Damodar Bhavan,
Chitteranjan Road, Ville-Parle
(East), Mumbai;

1(i) Smt. Savita B. Gianani,
major,

Both residing at A-3,
Damodar Housing Society,
Aquem-Alto,Margao,Goa;

2. Smt. Shakuntala R. Paingankar,
wife of Roghuvir R. Paingankar,
resident of House No.442,
Near Cine Vishant, Margao,Goa ... RESPONDENTS.

Mr. M.S. Sonak and Ms. Pooja Bharne, Advocates for the Appellants in all the matters.

Mr. M.S. Usgaonkar, Sr. Advocate, with Mr. Sudesh Usgaonkar, Advocate, for the Respondents in all the matters.

CORAM : F.I. REBELLO,J.

DATED : JULY 11, 2003.

ORAL JUDGMENT

Appeal From Order No.42 of 2000 is directed against the Order dated 14th January, 2000. The Appellants were the Plaintiffs and the Respondents, the Defendants. The brief facts are that it was the case of the Appellants that there was an agreement dated 6-6-1977, which was the subject-matter of a suit in which a consent decree was filed on 26-11-1984. It was the further case of the Appellants that the same was renewed for the period from 6-6-1990 to 5-6-1993. The subject-matter of the contract was extracting and transporting of ore from mining area of 75 H.A. The Trial Court initially granted ex-parte temporary injunction on 22nd January, 1991. The contention of the Appellants before the Trial Court was that they had a subsisting agreement and as such, the Respondents could not interfere with their exercise of

right in extracting ore.

On behalf of the Respondents herein it was contended that the agreement had not been renewed and that the purported letter of 16-5-1990 by which the Appellants herein purported to renew the contract was not served on them. It was their further case that by letter dated 7-1-1991 they had terminated the contract for various reasons. The Trial Court on the material before it, arrived at a conclusion that the Appellants herein had been unable to prove that the contract had been renewed and further also held that the Respondents herein were able to establish that there were breaches on the part of the Appellants herein and therefore held that the contract was validly terminated by letter dated 7-1-1991. Based on this the Court found that there was no merit in the contention of the Appellants and consequently vacated the ex-parte Order dated 22-1-1991. This is the subject-matter of the present Appeal. Civil Application No.149 of 2000 is an application for stay of the said Order which is pending. Similarly, Misc. Civil Application in the same Appeal was an application to implead State of Goa, which is also pending.

2. Appeal From Order No.48 of 2000 is by

the Appellants therein who were the Defendants in Special Civil Suit No.5/94/A which is a suit filed by the Respondents herein who were the Plaintiffs therein. The Respondents had taken out Civil Miscellaneous Application No.11/94/A as also Civil Miscellaneous Application NO.12/94/A. The interim application by the Respondents in the Suit was an application under Order 39, Rules 1 and 2 read with Section 151 of the C.P.C. and the other application was under Order 40, Rule 1. The Respondents' case was that they were title-holders of title No.52 which was divided into two parts: one an area of 25 H.A. and the other an area of 75 H.A. There was an a agreement dated 1-7-1964 between the Defendant No.1 (now Respondent No.1 represented by his legal heirs) and the Plaintiffs whereby the Appellants were permitted to extract iron ore from portion of area of 25 H.A. and further also an agreement to sell the ore to the firm on the terms and conditions. The agreement was for a period of four years under the terms and conditions set out therein. The agreement continued to be effective and operative until the year 1984 when there were disputes, whereupon the suit came to be filed being Special Civil Suit No.18 of 1987 for a declaration that an agreement of 1st July, 1964 had ceased to be operative or binding upon the Plaintiffs. An agreement, however, came to be arrived at between

the Respondents/Appellants herein on 15th July 1987 and consent terms were filed therein. It was the contention of the Respondents that Clause 2 of the Consent Terms is ambiguous and uncertain because it contemplates the existence of an agreement between the Appellants and the Salgaonkar Mining Industries Pvt. Ltd. on one hand and the Respondents V.M. Salgaonkar Pvt. Ltd. on the other hand. It is pointed out that the two agreements were entered into on 26th June, 1977 between Raghuvir Rajaram Paigankar, since deceased, and Salgaonkar Mining Industries Pvt. Ltd. for iron ore to be raised from Area of 75 H.A. and another agreement dated 6th June 1997 between the Respondents and V.M. Salgaonkar Industries Pvt. Ltd. for sale of iron ore from the said area 75 H.A. It is pleded that this clause is void and consequently the entire agreement is invalid. There are some other averments. It is the case of the Respondents that they were not paid and the Appellants have committed breach of the Consent Terms and as such the Appellants herein were liable to be restrained. The other application, as already pointed out, was for receiver.

The Respondents filed their appearance. They relied upon Consent Terms in Special Civil Suit No.18 of 1987 and contended that the suit as filed by the Respondents herein was untenable and liable to be

dismissed. Certain legal objections were raised. It was denied that the consent decree was void and not binding. Various other contentions were raised and it was submitted that agreement of 1964 still subsists. The Trial Court on the consideration of the material in paragraph 7 recorded that the Appellants herein do not appear to be serious about carrying out mining business with the Respondents pursuant to the Consent Terms and as such the Respondents' contention that the Defendants committed breach of consent terms appears to be sound. And for the same reasons, found that a strong prima facie case had been made out by the Respondents herein. In paragraph 21 the Trial Court considered the test of balance of convenience and found it in favour of the Appellants and also held that grave and irreparable loss will be occasioned to the Respondents rather than to the Appellants. The Appellants herein were directed to maintain status quo in the said mining concession and a Court receiver was appointed. The Court noted that in these circumstances it was necessary to injunct the Appellants herein by ordering maintenance of status quo in the suit mining concession. A receiver was appointed to take account of the Appellants regarding total extraction of ore and the payments and some other consequential directions.

3. That is the Order which is the subject-matter of Appeal from Order No.48 of 2000. Civil Application No.162 of 2000 therein was an application for stay of the said Order. The record would disclose that no stay was granted.

4. Appeal from Order No.50 of 2000 arises from the Order dated 4th February, 2000 in a suit filed by the Respondents against the Appellants herein who were the Defendants. By the said Order the Appellants have been directed to maintain status quo of the suit mining concession, also receiver has been appointed to take accounts in similar line which is set out and adverted to in the earlier Order. In this suit also the Respondents have taken out two applications in Civil Misc. Application No.11 of 1994 and Civil Misc. Appliation No.12 of 1994, one for injunction under Order 39, Rules 1 and 2 r/w Section 151 C.P.C. and the other for receiver under order 40. The matter pertained to the same concession title No.2. The only difference insofar as this Appeal is concerned is that it is confined to 25 hectares. Otherwise, the facts are similaras in Appeal from Order No.48 of 2000. As noted earlier, similar reliefs as granted in the earlier suit, have also been granted in this suit. Civil Application No.174 of 2000 was an application again for stay. No order was

passed by this Court thereon.

5. Appeal from Order No.58 of 2000 was again a suit filed by the Respondents against the present Appellants. The case of te Respondents herein was again in respect of the same mine bearing No.52 of 27-7-51. The suit pertained to 75 hectares and was in respect of a contract for raising ore. Similar facts as are set out in Appeal from Order no.48 of 2000 and Appeal from Order No.50 of 2000 were also in issue in this suit. Civil Miscellaneous Application NO.124 of 1990 was taken out which was an appliation for temporary injunction also for receiver. The Trial Court passed similar orders as had been adverted to in the earlier part of this Order.

6. From the above what is clear is that today there is an injunction restraining the Appellants in the proceedings from extracting ore from the said mine. There is a further Order of appointent of receiver for taking accounts in respect of the ore which already had been earlier raised and/or which may be found on the site. This Order continued to be in force from the year 2000 without any interim order having been passed by this Court.

7. The real question would be whether on

the facts existing, it would be a fit case for this Court to interfere with the interim orders. On behalf of the Appellants it was contended that after the matter was heard, the Judgment was reserved for nearly two years and only thereafter it came to be pronounced. From the record it is pointed out that written arguments were filed on behalf of the parties. The position of law, as it stands now, is that in these circumstances it was open to a party if the judgment is not delivered within three months, to move the very same Court. This admittedly had not been done. Even otherwise, the matter is in appeal before this Court and pending for the last two years.

From the facts narrated above, what is clear is that there was a dispute between the parties on one hand whether the contract stood renewed pursuant to letter dated 16-5-1990 which the Appellants contend was served on the Respondents. This was disputed by the Respondents and there is clear finding of fact recorded by the Trial Court that the Appellants herein had been unable to prove that the said letter in fact was sent. The other aspect of the matter is that the Respondents by their letter of 7-1-1991 had terminated the contract on account of breaches. The Trial Court on consideration of the material before it found in favour of the Respondents that the Appellants had

breached the terms of the contract and consequently granted the injunction. The initial contract dated 6-6-1977 initially was for a period of 10 years. It came to be determined on 27-11-1984. However, a suit came to be filed in which Consent Terms came to be filed. Admittedly, the mining lease now stands in the name of the Respondents. The Appellants herein were merely acting based on contracts for extraction and for sale of ore.

8. The real issue, therefore, would be whether the Appellants have been able to show that the agreements have been renewed. If the agreements are not renewed, the question of the Appellants raising ore, or for that matter, the Respondents selling to them the raised ore, would not arise. There are serious disputes on that count. Prima facie, the Trial Court has found in favour of the Respondents herein. On a consideration of the material on record, I do not find any perversity in the said findings and, in these circumstances, in my opinion, it would not be a fit case where this Court should interfere with the orders passed by the Trial Court. At the same time, considering the order of injunction that the ore cannot be raised and since ultimately it is a national resource which has to be exploited, the revenue thereon cannot suffer because of the injunction and in

these circumstances it would be in the fitness of things that the suit is disposed of expeditiously. Parties inform that evidence in the Special Civil Suit No.8 of 1991 has commenced. Considering the provisions of Order 18 as the parties are bound to file evidence on application insofar as the examination-in-chief is concered and at the highest in the event Commissioner is not appointed, the Court itself can considering the issues allow the cross-examination to be conducted before it. The ends of justice will be met if all the suits from which appeals have arisen are disposed of expeditiously, at any rate, on or before 31st March, 2004.

It is made clear that the observations and findings recorded are prima facie. The Trial Court will dispose of the suit uninfluenced by the findings of this Court and based on the evidence which comes before the Court.

The Appeals along with the Civil Applications stand disposed of.

F.I. REBELLO,J.

ac.